TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~721~~ 1440

MARY A. PEARSON, JANE C. HEYL, CAROLINE C. HARRIS, AND MARGARET DEEK, HEIRS OF ROBERT AND JANE CHAPMAN, DECEASED, PLAINTIFFS IN ERROR,

vs.

JOHN YEWDALL AND ANNE JANE YEWDALL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

FILED SEPTEMBER 27, 1876.

SUPREME COURT OF THE UNITED STATES.

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INDEX.

	Original.	Print.
Petition for writ of error	1	1
Bond	11	3
Writ of error	13	4
Citation	16	5
Petition	17	6
Affidavit of Samuel Johnson	19	6
Notice	19	7
Report of jury	20	7
Exceptions of the city	22	9
Report of second jury	23	9
Exceptions	29	13
Special allocatur	35	17
Certiorari	36	18
Specifications of error	39	20
Docket entries	42	22
Opinion of the Supreme Court	44	22
Clerk's certificate	45	24
Assignment of errors	46	24

1 *Petition to chief justice of supreme court of Pennsylvania for allowance of a writ of error from the Supreme Court of the U. S., and allowance of said writ.*

To the honorable Daniel Agnew, chief-justice of the supreme court of Pennsylvania:

The petition of Mary A. Pearson, Jane C. Heyl, Caroline C. Harris, and Margaret Dilk, heirs of Robert Chapman and Jane Chapman, deceased, humbly sheweth:

That on their petition a writ of certiorari was allowed by a judge of the supreme court of Pennsylvania, on the ninth day of May, A. D. 1874, directed to the judge of the court of quarter sessions of the peace for the city and county of Philadelphia, & commanding said judges to certify to said supreme court the record and proceedings of a certain case then pending in said court of quarter sessions, entitled—

In the matter of the opening of Paschall street from Fifty-second street to Haverford street, in the Twenty-fourth ward of the city
2 of Philadelphia.

Your petitioners were defendants in said case. A valuable piece of land in said city of Philadelphia, whereof they were owners, was to be taken from them if said proceedings were successful.

The jury appointed in said case were composed of only six men, only five of whom were sworn. To the report of said jury your petitioners filed in said court of quarter sessions, inter alia, the following

EXCEPTION.

"That the proceedings to assess damages in the case are in conflict with Article V and Article VII of the amendment' of 1789 to the Constitution of the U. S., which provides that no person shall be deprived of his property without due course of law, and that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

3 Said court of quarter sessions overruled all the exceptions.

The record was thereupon removed by certiorari, specially allowed as aforesaid, to the supreme court of Pennsylvania, where your petitioners filed, inter alia, the following

ASSIGNMENTS OF ERROR.

"Because the act of general assembly of Penna., approved July 13, 1836, entitled 'An act relating to roads, highways, and bridges,' providing for a jury of only six men (being the act under which these proceedings were instituted) is in conflict with the Article V of the amendments of 1789 to the Constitution of the U. S., which provides inter alia that * * * 'no person shall be deprived of * * * * property without due process of law.'"

"Because the act of the general assembly of Penna., approved July 13, 1836, entitled 'An act relating to roads, highways, and bridges,' providing for a jury of only six men (being the act under which these
4 *these* proceedings were instituted) is in conflict with Article VII of the amendment' of 1789 to the Constitution of the United States, which provides inter alias as follows: * * * 'Nor shall private property be taken for public use without just compensation, and that in suits at common law, where the value in controversy exceeds twenty dollars, the right of trial by jury shall be preserved.'"

"Because the act of general assembly of Pennsylvania, approved July 13, 1836, entitled 'An act relating to roads, highways, and bridges, providing for a jury of only six men (being the act under which these proceedings were instituted) is in conflict with Article XIV of the amendment' to the Constitution of the United States, which provides' as follows: * * * * 'Nor shall any State deprive any person of life, liberty, or property without due process of law.'"

5 And your petitioners further show that the said supreme court, on the thirteenth day of March, A. D. 1876, affirmed the decree of said court of quarter sessions, whereby your petitioners will lose land of the value of ten thousand dollars upon the verdict of only five jurors, and will receive therefor only the sum of twelve hundred dollars, and thus to the extent of eight thousand eight hundred dollars, your petitioners will, if said decree stand, be deprived of their land without any compensation, and by an unconstitutional & illegal judgment.

And your petitioners further show that said decision of the said supreme court is a decision of the highest court of law of the State of Pennsylvania in which a decision in said suit could be had; that said decision of said supreme court is final; & that the right, title, and immunity claimed by your petitioners was claimed by them under

6 the Constitution of the United States and the VII and XIV amendments thereto, and that the said decision of the said supreme court is against the right, title, and immunity so claimed by your petitioners.

Your petitioners further show that in said proceedings there was drawn in question the validity of the statute of said State of Pennsylvania approved July 13, 1836, entitled "An act relating to roads, highways, and bridges," on the ground of its being repugnant to the Constitution of the United States, as specially stated in the assignments of error above set forth; and that the decision of the said supreme court of Pennsylvania is in favor of the validity of said statute.

Your petitioners further show that at the time of the commencement of said unconstitutional proceedings they were & thence have been & still are citizens of the State of Pennsylvania and citizens

7 of the United States, and as such citizens they were and are entitled to the enjoyment and possession of their land and to protection from any deprivation thereof except by due process of law and by trial by jury of twelve men.

And your petitioners further shew that the truth of all of their aforesaid averments as to said proceedings will appear by the record thereof in said supreme court of Pennsylvania for the eastern district to July term, 1874, No. 39, a true copy whereof is exhibited herewith.

Your petitioners therefore pray for the allowance of a writ of error from the Supreme Court of the United States to the supreme court of the State of Pennsylvania and to the court of quarter sessions of the peace for the city and county of Philadelphia to remove said rec-

8 ord into the Supreme Court of the United States, that the said decision of the supreme court of Pennsylvania may be examined and reversed or affirmed in said Supreme Court of the United States as to right and justice may appertain.

And your petitioners will ever pray.

MARY A. PEARSON.
JANE C. HEYL.
CAROLINE C. HARRIS.
MARGARET DELK.

Before me, the subscriber, an United States commissioner, personally appeared the above-named Mary A. Pearson and Margaret Delk, who, being duly affirmed according to law, did depose and say that the facts set forth in the foregoing petition are true and correct, and that the writ of error is not intended for delay.

MARY A. PEARSON.
MARGARET DELK.

Affirmed and subscribed before me this 13' day M'c'h, A. D. 1876.

SAMUEL BELL,
U. S. Commissioner.

9 (Indorsed:) In re Pearson's appeal. Petition of Mary A. Pearson et al., heirs of Robert Chapman, dec., for allowance of writ of error to S. C. of Penna.

MARCH 14TH, 1876.

Writ of error allowed per

DAN'L AGNEW,
Chief Justice Penna.

10 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original petition of Mary A. Pearson et al., heirs of Robert Chapman, dec'd, for allowance of writ of error to S. C. of Penna., on file, and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this fourteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of these United States the 100th.

[SEAL.]

SAMUEL BELL,
Clerk of C. C.

11 *Bond.*

Know all men by these presents that we, Mary A. Pearson, Jane C. Heyl, Caroline C. Harris, and Margaret Delk, as principals, and Jacob E. Heyl and Davis Pearson, as sureties, are held and firmly bound unto John Yewdall and Anne Jane Yewdall, in the just and full sum of five thousand dollars, (5,000,) to be paid to the said John Yewdall and Anne Jane Yewdall, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, firmly by these presents, sealed with our seals this fourteenth day of March, 1876.

Whereas, lately, in the supreme court of the State of Pennsylvania, in a suit depending in said court between Mary A. Pearson, Jane C. Heyl, Caroline C. Harris, and Margaret Delk, as appellants, and John Yewdall and Anne Jane Yewdall, appellees, aforesaid, judgment was rendered against the said appellants, and the said appellants having obtained a writ of error, and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said appellees citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Mary A. Pearson, Jane C. Heyl, Caroline C. Harris, and Margaret Delk shall prosecute their said writ of error to effect, and answer all
12 damages and costs if they fail to (*make*) make their plea good, then the above obligation to be void, else to remain in full force and virtue.

MARY A. PEARSON. [L. S.]
JANE C. HEYL. [L. S.]
CAROLINE C. HARRIS. [L. S.]
MARGARET DELK. [L. S.]
JACOB E. HEYL. [L. S.]
DAVIS PEARSON. [L. S.]

Signed, sealed, & delivered in the presence of—
WM. E. HEYL, for Mary A. Pearson & Jane C. Heyl.
E. H. DELK, for Caroline C. Harris & Margaret Delk.
Witness:
SAMUEL BELL.

Personally appeared before me this fourteenth day of March, A. D. 1876, the above-named sureties, each of whom, being duly sworn, doth depose and say that they are worth five thousand dollars over and above all just debts and liabilities.

SAMUEL BELL, [L. S.]
U. S. Commissioner.

(Endorsed:) In the matter of Pearson's appeal.
Bond approved this March 15, 1876.
B. E. FLETCHER, *Prothy.*
Approved March 15, 1876.
DANIEL AGNEW, *C. J.*

13 *Writ of error from Supreme Court U. S.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the State of Pennsylvania, greeting:

Because in the record and proceedings, as also in the rendition of the judgment which is in the said supreme court, before you or some of you, being the highest court of law and equity of said State in which a suit could be had, between Mary A. Pearson, Jane C. Heyl, Caroline C. Harris, and Margaret Delk, appellants, and John Yewdall and Anne Jane Yewdall, appellees, wherein was drawn in question the validity of a statute of the State of Pennsylvania and an authority exercised under said statute, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, or wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of said Constitution, a manifest error hath happened, to the great damage of the said Mary A. Pearson, Jane C. Heyl, Caro-
14 line C. Harris, and Margaret Delk, heirs of Robert Chapman and Jane Chapman, deceased, as is said and appears by their complaint; we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Chief-Justice of the Supreme Court of the United States the 14th day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[SEAL.] SAMUEL BELL,
Clerk of the Circuit Court of the United States of America for the Eastern District of Penna.

15 To the honorable the justices of the Supreme Court of the United States:

The record and the proceedings in the within case, & all things touching the same, are hereby certified by us, & we hereby send as within we are commanded.

DANIEL AGNEW, *C. J.* [SEAL.]
GEO. SHARSWOOD. [SEAL.]
ULYSSES MERCUR. [SEAL.]
ISAAC G. GORDON. [SEAL.]

(Indorsed:) In the matter of Pearson's appeal. Writ of error.

16 *Citation.*

The United States of America unto John Yewdall and Anne Jane Yewdall, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Pennsylvania, wherein you are defendants in error, and Mary A. Pearson, Jane C. Heyl, Caroline C. Harris, and Margaret Delk, heirs of Robert & Jane Chapman, dec'd, plaintiffs in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Hon. Daniel Agnew, chief-justice of the supreme court of the State of Pennsylvania, on this 14th day of March, A. D. 1876.

DANIEL AGNEW, *C. J.*

I accept service of the foregoing citation in behalf of John Yewdall and Anne J. Yewdall. March 16, 1876.

WM. W. WILTBANK,
Atty. for J. and A. J. Yewdall.

(Indorsed:) In re Pearson's appeal. Citation.

17 RECORD.

Copy of petition and endorsements.

In the court of quarter sessions of the peace, county of Philadelphia.

IN THE MATTER OF THE OPENING OF PASCHALL street from Fifty-second street to Haverford street, in the Twenty-fourth ward of the city of Philadelphia.

To the honorable the judges of the said court:

The petition of the undersigned respectfully sheweth:

That he is an owner of property fronting on the said Paschall street, as it extends from Fifty-second street to Haverford street, in the Twenty-fourth ward of the said city, which street has been laid out upon the confirmed plans of the said city, and by virtue of the acts of assembly, and of the ordinances of councils in such case made and provided, has been ordered to be opened, whereof your petitioner has been notified.

Your petitioner further shows that by the opening of the said street his private property will be taken. And he therefore prays your honorable court to appoint proper persons to view the premises, and to assess the damages sustained by him by reason of the said opening of the said street, and to make report thereof to your honorable court, in manner and form as required by the statute in such case made and provided.

And he will ever pray, &c., &c.

JOHN YEWDALL.
A. J. YEWDALL.

18 On the above petition are the following endorsements:

Court of quarter sessions. Matter of Paschall st., 24th ward. Petition for a jury to assess damages.

Jurors appointed: Lewis Jones, John M. George, Henry W. Baltz, F. H. Gove, Jona Bonsall, George W. Shubert, Wm. S. Hoffman, Mahlon Wanner, Alexander Clare.

E. M. PAXSON.

Filed June 5th, 1871.

PASCHALL STREET.—Jurors appointed: George T. Jones, Furman Mayhew, John F. Gross, Enoch Hopkins, Samuel D. Hall, Joseph L. Hancock.

JOS. ALLISON.

MAY 30, 1872.

Filed May 30, 1872. R. S. G., pro clrk.

19 *Affidavit of Sam'l Johnson.*

In the court of quarter sessions, city and county of Philadelphia.

MATTER OF Paschall street.

Samuel Johnson, being duly sworn, doth say that the persons whose names are given herewith are all the owners of real estate through which the said road is to run, and that the form of notice hereto attached is a copy of the notice served upon each of the said property-owners.

John Yewdall.
James and John Hunter.
Daniel Forbes.
John Warren.
Chris. Christine.
Mr. Strickland.
Mrs. Anne J. Yewdall.
John Hunter.
Samuel Brookmire.
Mrs. Hamilton.
Philadelphia Land Co.
Esher Est.
Mr. Prentis.

SAM'L JOHNSON.

Sworn and subscribed before me this eighth day of July, 1871.

HOLSTEIN DE HAVEN, [L. S.]
Notary Public.

Notice.

The court of quarter sessions of the peace, city and county of Philadelphia.

IN THE MATTER OF }
Paschall street. }

To: The said court has appointed a jury in the said matter to ascertain and report whether or not the owners of private property fronting on said street as it runs from Fifty-second street to Haverford street, in the said city, do or will sustain any damage by reason of the opening of the same in pursuance of an order by the proper authorities, and also to assess the damages, if any are or will be sustained, and further to act according to law; and the jury will meet for the purposes of the appointment on July 11th, 1871, at three o'clock p. m., at the city solicitor's office, 212 South Fifth street, when and where you are hereby notified to attend, if you see fit.

Respectfully, yours,

W. W. WILTBANK,
627 *Walnut street.*

20 PAPERS RETURNED ON CERTIORARI SUR DIMINUTION OF RECORD.

Report of jury.

In the court of quarter sessions, Philadelphia County.

IN THE MATTER OF THE OPENING OF }
Paschall street. }

To the honorable the judges of the said court:

The undersigned jurors appointed by the said court, upon petition duly presented, to ascertain whether any damages are sustained by the owners of property adjacent to the said Paschall street, as it extended from (52d) Fifty-second street to Haverford Road, in the Twenty-fourth ward of the city of Philadelphia, by reason of the opening of the said street by the authority of the said city, and to report the amount thereof, if any there be, and to assess the same, according to the acts of assembly in such cases made and provided, respectfully report, that pursuant to legal notice they met for the purposes of their appointment on the eleventh day of July, A. D. 1871, at three o'clock p. m., at the office of

the solicitor, No. 212 South Fifth street, in the said city, when and where there were present Mahlon Wanner, Jonathan Bonsall, Lewis Jones, Henry W. Baltz, jurymen; William N. Ashman, esq., assistant city solicitor; Joseph Rhoades, esq., attorney for George Prentice, and who subsequently appeared for the estate of Chapman, deceased, property owners, and William W. Wiltbank, esq., attorney for John Yewdall, and who subsequently appeared for Samuel Brookmire, property owners.

At a subsequent meeting Henry M. Dechert, esq., appeared as attorney for the estate held in common by Mrs. Dr. J. K. Lee and Mrs. Catharine Hoffman.

At the said first meeting a copy of the notice served upon William S. Hoffiner and F. H. Good, absent jurors, was produced, verified by the affidavit of the person by whom the same was served, and accompanied by proof of the time, place, and manner of said service, which copy of notice and affidavit are hereto annexed as a part of this report. The jurors present were examined on their voir dire by the assistant city solicitor, and were found qualified; whereupon, having chosen Mahlon Wanner, esq., foreman, they were all duly sworn or affirmed according to law; and it apearing that William S. Hoffiner and F. H. Good, the absent jurors, were not qualified to serve, the jury adjourned to meet on July 18, 1871, at four o'clock p. m., after two gentlemen should have been appointed in their stead, Alexander Clark and George W. Shubert having been appointed, found eligible upon examination, and were duly sworn or affirmed according to law.

At a meeting held on the fifteenth day of November, A. D. 1871, at the office of the city solicitor, at which meeting there were present Mahlon Wanner, Jonathan Bonsall, Lewis Jones, and the said Alex-
21 ander Clark, and George W. Shubert, jurymen; William N. Ashman, esq., assistant city solicitor, and William W. Wiltbank, esq., attorney aforesaid, it being essential that the premises should be viewed by the jury before further proceedings were had, the meeting was adjourned for that purpose. Many meetings were thereafter held, at the office of the city solicitor, at stated times, in all numbering twenty-three meetings, for the purpose of taking testimony and of considering the evidence and the arguments of counsel.

After the expiration of the term of office of William N. Ashman, esq., the city was represented to the close of the proceedings by Joseph K. Fletcher, esq., assistant city solicitor. The premises were carefully viewed by the jury on the twenty-second day of November, A. D. 1871, and again on the eighth day of January, A. D. 1872, and the adjournments made were on all occasions for good cause, either after prolonged sittings to secure absent witnesses, or for like sufficient reason. The jury have found, and do now further report, that the following-named claimants owning lands on the said Paschall street, between Fifty-second street and Haverford road, have suffered damage in that their private property has been taken by the opening of the said street, and after having duly allowed for the advantages accruing to the said parties by the said opening, they assess the actual damage sustained by them at the following amounts:

$1,200. By Samuel Brookmire, twelve hundred dollars.

$8,413$\frac{66\frac{2}{3}}{100}$. George Prentice, eight thousand four hundred and sixteen $\frac{66\frac{2}{3}}{100}$ dollars.

$1,933$\frac{33\frac{1}{3}}{100}$. Mrs. Mary H. Pearson, Mrs. Janate Heyle, Mrs. Catharine C. Harris, Mrs. Margaret Delk, heirs of Robert Chapman, deceased, nineteen hundred and thirty-three $\frac{33\frac{1}{3}}{100}$ dollars.

$600. Mrs. Dr. J. K. Lee and Miss Catharine Hoffman, tenants in common, six hundred dollars.

The jury further report that they have made inquiry as to the advantages of opening said street to property in the immediate vicinity thereof, and they have determined that the damages ascertained as above reported shall not be paid by the owner of said property, but that the same should be paid to the persons above named and in the sums specifically indicated by the city of Philadelphia.

22 All of which is respectfully submitted.

MAHLON WANNER. [SEAL.]
JONATHAN BONSALL. [SEAL.]
LEWIS JONES. [SEAL.]
H. W. BALTZ. [SEAL.]
ALEXANDER CLARK. [SEAL.]
GEORGE W. SHUBERT. [SEAL.]

Filed March 16, 1872.

IN THE MATTER OF PASCHALL STREET FROM 52d st. to Haverford road.

Exceptions of the city.

The city of Philadelphia excepts to the report of jury in this matter, because—

1. The damages awarded to Samuel Brookmire are excessive.
2. The damages awarded to George Prentice are excessive.
3. The damages awarded to the heirs of Robert Chapman, deceased, are excessive.
4. The damages awarded to Dr. Lee and Miss Hoffman are excessive.
5. The whole damages are awarded against the city.

W. J. McELROY,
For the City.

Filed March 26, 1872.

MATTER OF Paschall street.

And now, to wit, June 6th, 1872, the court appoint Geo. Reese and Jos. Pennock jurors to serve in the said matter in the stead of Furman Mayhew and John F. Gross.

J. R. L.

23 IN RE Paschall street.

And now, June 14, 1872, the court orders that the plan attached to the report filed by the previous jury, appointed to assess the damages caused by reason of the opening of said street, which report was set aside, be detached for the use of the jury now sitting in said matter, to be annexed to their report.

WM. T. LEWIS, *C.*

In the court of quarter sessions of Philadelphia County.

IN THE MATTER OF THE OPENING OF Paschall street.

Report of 2d jury.

To the honorable the judges of the said court:

The undersigned jurors appointed by the said court, upon petition

duly presented, to ascertain whether any damages are sustained by the owners of property adjacent to the said Paschall street as it extends from Fifty-second street to Haverford road, in the twenty-fourth ward of the city of Philadelphia, by reason of the opening of the said street by the order of the said city, and to report the amount thereof, if any there be, and to assess the same in accordance with the acts of assembly in such case made and provided, respectfully report:

That, pursuant to legal notice, they met for the purposes of their appointment on the fifth day of June, A. D. 1872, at three o'clock p. m., at the office of the city solicitor, No. 212 South Fifth street, in the said city, when and where there were present—

George T. Jones, Enoch J. Hopkins, Samuel D. Hall, Joseph L. Hancock, jurors;

24 Wm. Grew, esq., assistant city solicitor, on behalf of the city of Philadelphia;

Henry M. Dechert, esq., attorney for Mrs. Hannah R. H. Lee and Miss Catharine Hoffman;

Joseph R. Rhoads, esq., attorney for the heirs of the estate of Robert Chapman, deceased, and for Mr. George G. Prentice;

Wm. W. Wiltbank, esq., attorney for the petitioners, and for Mr. John Yewdall and Mrs. Anne Yewdall, his wife; and

Mr. Samuel Brookmire, a property-owner; appearing in person.

Messrs. Furman Mayhew and John F. Gross, jurors, being absent, a copy of the notice served upon them was produced, verified by the oath of the person by whom the same was served upon each, which copy was accompanied by proof of the time, place, and manner of said service, and the said copy of notice and affidavit are hereto annexed as a part of this report.

The jurors present were examined on their voir dire by the assistant city solicitor, and were found duly qualified, whereupon they were all duly sworn or affirmed to perform their duties in the premises according to law.

Mr. George Reese and Mr. Joseph Pennock having been thereafter appointed by your honorable court to serve in the place and stead of Mr. Furman Mayhew and Mr. John F. Gross, at a meeting held on the twelfth day of June, A. D. 1872, at three o'clock p. m., at which there were present—

George T. Jones, Enoch J. Hopkins, Samuel D. Hall, Joseph L. Hancock, jurors;

Joseph K. Fletcher, esq., assistant city solicitor, on behalf of the city of Philadelphia;

Joseph R. Rhoads, esq., attorney as aforesaid; and

Wm. W. Wiltbank, esq., attorney as aforesaid.

25 Mr. George Reese was examined on his voir dire by the assistant city solicitor, and found duly qualified. Mr. Joseph Pennock being absent, a copy of the notice served upon him was produced, verified by the oath of the person by whom the same was served, which copy was accompanied by proof of the time, place, and manner of said service; and the said copy of notice and affidavit are hereto annexed as a part of this report. Mr. George Reese was then duly affirmed to perform his duties in the premises according to law.

Mr. George T. Jones was subsequently elected foreman of the jury.

On the twentieth day of September, A. D. 1872, the jury passed over and viewed the ground.

The jury were subsequently attended by Henry C. Carroll, esq., a property-owner, appearing in person.

Many meetings were thereafter held at stated times and pursuant to adjournments, in all numbering seventeen meetings, at which testimony was taken, evidence was considered, and arguments of counsel were heard. The adjournments made were on all occasions for good cause, either after prolonged sittings to secure the attendance of absent witnesses, or for like sufficient reason.

The jury have found, and do now further report, that the following claimants, owning land on the said Paschall street, between Fifty-second street and Haverford road, have suffered damage, in that their private property has been taken by the opening of the said street, and, after having duly allowed for the advantages accruing to the said parties by the said opening, they assess the actual damages sustained by them at the following amounts:

By the estate of the heirs of Robert Chapman, deceased, twelve hundred dollars, ($1,200.)

By Mrs. Hannah R. H. Lee and Miss Catharine Hoffman, five hundred dollars, ($500.)

By Mr. George G. Prentice, twenty-six hundred and fifty dollars, ($2,650.)

The jury having fully considered the cases of Mr. Samuel
26 Brookmire and Mr. Henry C. Carroll, and all the evidence in the premises, are unanimously of the opinion that the advantages derived to their properties by the opening of the said street fully counterbalances the damages sustained by them thereby, and they therefore report that no allowance should be made to the gentlemen named.

The jury further report that they have considered the question whether any advantages are secured to the properties in the vicinity of the said street by the said opening relatively to the propriety of assessing thereon, or upon the owners thereof, the whole or any part of the damages named above; and they have determined that the damages herein ascertained should not be paid by the said owners; but that the same should be paid to the persons and the estate above named, or to the attorneys thereof, and in the amounts specifically indicated, by the city of Philadelphia.

All of which is respectfully submitted.

GEORGE T. JONES. [SEAL.]
ENOCH G. HOPKINS. [SEAL.]
SAMUEL D. HALL. [SEAL.]
J. L. HANCOCK. [SEAL.]
GEORGE REESE. [SEAL.]

Notice of meeting of jury.

The court of quarter sessions of the peace, city and county of Philadelphia.

IN THE MATTER OF }
Paschall street. }

To Charles H. T. Collis, esq., city solicitor:

The said court has appointed a jury in the said matter, to ascertain and report whether or not the owners of private property fronting on said street, as it runs from Fifty-second street to Haverford street, in the said city, do or will sustain any damage by reason of the opening of the same in pursuance of an order by the proper authorities: and also to assess the damages, if any are or will be sustained, and further to act

according to law; and the jury will meet for the purposes of the appointment on June 5th, 1872, at three o'clock, p. m., at the city solicitor's office, 212 South Fifth street, when and where you are hereby notified to attend, if you see fit.

Respectfully, yours,

W. W. WILTBANK,
Attorney for certain Property-Owners.

I hereby, for city, accept service of notice of filing.

WM. GREW,
Assistant City Solicitor.

27 *Copies of affidavits annexed to petition.*

Samuel Johnson, being duly sworn according to law, doth depose and say, that the paper hereto attached is a true copy of notices served by him upon Furman Mayhew and John F. Gross, and that he served the original, addressed to the said Furman Mayhew, on the third day of June, 1872, at Mr. Hopkins' office, on Forty-first street, near Haverford street, in the Twenty-fourth ward, by giving the same to him in person, and that he served the original, addressed to the said John F. Gross, on the same day, at the depot of the West Philadelphia Passenger-Railway, in the said ward, by giving the same to him in person.

SAML. JOHNSON.

Sworn and subscribed before me this fifth day of June, 1872.

J. E. CARPENTER, [L. S.]
Notary Public.

The court of quarter sessions of the peace, city and county of Philadelphia.

IN THE MATTER OF }
Paschall street. }

SIR: The said court has appointed a jury, of which you are a member, to ascertain whether or not the owners of private property fronting on the said street, as it runs from Fifty-second street to Haverford street, in the said city, *I* do or will sustain any damage by reason of the opening of the same; and also to assess the damages, if any are, or will be, sustained; and further to act according to law.

You are hereby notified to meet the jury for the purposes of your appointment at three o'clock, p. m. on the fifth day of June, 1872, at the city solicitor's office, No. 212 South Fifth street, Philadelphia.

Very respectfully, yours,

W. W. WILTBANK.

To FURMAN MAYHEW, Esq.

28 The court of quarter sessions of the peace, city and county of Philadelphia.

IN THE MATTER OF }
Paschall street. }

SIR: The said court has appointed a jury, of which you are a member, to ascertain whether or not the owners of private property front-

ing on the said street as it runs from Fifty-second street to Haverford street, in the said city, do or will sustain any damage by reason of the opening of the same; and also to assess the damages, if any are, or will be, sustained; and further to act according to law.

You are hereby notified to meet the jury for the puposes of your appointment at three o'clock p. m., on the fifth day of June, at the city solicitor's office, No. 212 South Fifth street, Philadelphia.

Very respectfully, yours,

W. W. WILTBANK.

To JOHN F. GROSS, Esq.

Samuel Johnson, being duly sworn according to law, doth depose and say that the paper hereto attached is a true copy of a notice served by him upon Joseph Pennock, and that he served the original, addressed to the said Joseph Pennock, on the eighth day of June, 1872, at his house, by giving the same to him in person.

SAMUEL JOHNSON.

Sworn and subscribed before me this twelfth day of June, 1872.

J. E. CARPENTER, [L. S.]
Notary Public.

The court of quarter sessions of the peace, city and county of Philadelphia.

IN THE MATTER OF }
Paschall street. }

SIR: The said court has appointed a jury, of which you are a member, to ascertain whether or not the owners of private property fronting on the said street as it runs from Fifty-second street to Haverford street, in the said city, do or will sustain any damage by reason of the opening of the same; and also to assess the damages, if any are, or will be, sustained; and further to act according to law.

You are hereby notified to meet the jury for the purposes of your appointment at three o'clock p. m., on the twelfth day of June, 1872, at the Park Hotel, Lancaster Avenue, near Fifty-second street, Philadelphia.

Very respectfully, yours,

W. W. WILTBANK.

To JOSEPH PENNOCK, Esq.

29 *Exceptions of Prentice & of Chapman's heirs.*

Quarter sessions.

IN MATTER OF }
Paschall street. } Jury of damages.

George G. Prentice and the heirs of Robert Chapman, deceased, two of the claimants before the jury of damages in above matter, except to the report of the said jury, for the following reasons:

First. Because neither the petition for said jury nor a certified copy of the same is attached to or made part of said report, nor does any such petition appear of record in the office of the clerk of said court, and there is nothing upon record to show the fact, nor the regularity of the appointment of the said jury.

Second. Because the affidavit required by the rules of this court setting forth the names of all the owners of real estate through which said street runs, and containing a copy of the notice served upon each of the said property owners, has not been made and filed sec. reg.

Third. Because due notice of the appointment and meeting of said jury was not served upon them, the said claimants, and other property owners.

Fourth. Because the amounts awarded to them, the said claimants, for their damages are inadequate and insufficient to compensate them for their damage by reason of the opening of the said Paschall street.

Fifth. Because the jury have not assessed upon properties in the vicinity of the said opening, and which will be benefited thereby, any of the benefits thereof, but report that the whole amount of the awards shall be paid by the city of Philadelphia.

JOSEPH R. RHOADS,
Of Counsel for Geo. G. Prentice, and the Heirs of Robert Chapman, Deceased.

MARCH 28, 1873.

NOTE.—On the above exceptions are the following endorsements: Quarter sessions. Paschall street. Jury of damages. Exceptions of Geo. G. Prentice and heirs of Robert Chapman, deceased, to report of said jury. Jos. R. Rhoads, of counsel for the exceptants. March 28, 1873. Filed March 28, 1873, R. S. G.

30 *Exceptions of the city.*

In the court of quarter sessions of Philadelphia County.

IN THE MATTER OF THE OPENING OF }
Paschal street. }

Exceptions on behalf of the city of Philadelphia to the report of the jury.

The said city excepts to the said report:

1. Because the damages awarded to the heirs of Robert Chapman, deceased, are excessive.

2. Because the damages awarded to Mrs. Hannah R. H. Lee and Miss Catherine Hoffman are excessive.

3. Because the damages awarded to George G. Prentice are excessive.

4. Because the jury erred in awarding any damages to any of the persons before named, inasmuch as the benefits accruing to the respective properties owned by them were fully equal to the injuries caused by the taking of their land by the opening of the said street.

5. Because the entire amount of the damages assessed was charged upon the said city, and no portion thereof upon persons who were benefited by the opening of the said street.

GREW,
WILLSON,
Pro City.

On the above exceptions are the following endorsements: In re Paschal street. Q. S. Exceptions on part of city. Filed March 27, 1873. F. P. G. Grew, Willson, pro city.

31 *Affidavits of surveyor et al.*

In the court of quarter sessions of Philadelphia County.

George W. Hancock, being duly affirmed according to law, doth say: I am the surveyor of the eleventh survey district of the city of Philadelphia, in which Paschall street, as it runs from Fifty-second street to Haverford road, is situated. A portion of the land lying along the said street, as appears by the map of the locality which I have made and have officially certified, and which accompanies the report made to this court, of the jury convened to ascertain and assess damages on June 5th, 1872, once belonged to the Philadelphia Land Company, but was by that company dedicated to, and accepted, and is now owned by, the said city. The following-named persons were all the owners of land fronting on the said street during the meetings, from first to last, of the said jury, in addition to the said city as donee of the said land association; that is to say: George Prentice, Mrs. Hannah Lee, Miss Catherine Hoffman, heirs of Robert Chapman, deceased, W. Yewdell, John Yewdell, Jane Supplee, estate of Thomas Hunter, Samuel Brookmire, Henry C. Carroll.

GEO. W. HANCOCK.

Affirmed and subscribed before me this twenty-seventh day of May, A. D. 1873.

R. T. FRAILEY, [L. S.]
Notary Public.

Samfiel Johnson, being duly affirmed according to law, doth say that he gave personal notice to John Hunter, one of the owners of property on Paschall street, as it runs from Fifty-second street to Haverford road, of the appointment and meeting of the second jury, appointed to ascertain and report of damages, and that the said John Hunter went over the ground with the said jury. He also so notified Samuel
32 Brookmire, who was likewise on the ground with the said jury when they examined his property; and Henry C. Carroll appeared in person before the jury, and was examined by them.

SAM'L JOHNSON.

Affirmed and subscribed before me this twenty-third day of May, A. D. 1872.

[L. S.] R. T. FRAILEY,
Notary Public.

Paschall street. Q. S. Affidavits, George W. Hancock, Samuel Johnson. Filed May 28, 1873. F. P. G., pro clerk.

Court of quarter sessions, Philadelphia County.

MATTER OF }
Paschall street. }

Depositions taken before me, J. Edward Carpenter, notary public, in the said matter, this nineteeth day of June, A. D. 1873, at No. 627 Walnut street.

Present: Hon. F. C. Brewster, Joseph R. Rhoads, esq., and W. W.

Wiltbank, esq.; and of the jury, Joseph L. Hancock, George T. Jones, Samuel D. Hall and George Reese.

MATTER OF
Paschall street.

Joseph L. Hancock affirmed:

I am one of the jurymen in this case and have signed the report. I was present when the jury made the view. I don't think I was absent from any of the meetings. Perhaps I was absent from one. The first meeting was, I think, held in the first part of June, 1872. Mr. Joseph Pennock was not appointed a juryman at that time. He was subsequently appointed. He had been appointed at the time the jury made the view. The jury made the view some time in September. Mr. Pennock, I was informed, was sick at the time of the view by the jury. He had had a stroke of paralysis. In getting out of the cars at the
33 Arch street depot, he was taken sick. As far as I recollect, it was some time in August that he was taken sick. At any rate, it was so announced to us when we met to take the view. At that meeting, the city was represented by Mr. Fletcher. Mr. Rhoads was present. It was agreed to go on under the circumstances. No objections were made. It was stated to us there, that Mr. Pennock being sick, it was not likely that he could be there, and the question was raised among the attorneys whether we should go on, and it was agreed that we should go on—at least, I heard no objections to it from any one. I heard no objection until after the report was filed.

(Objected to by Mr. Brewster.)

Cross-examined, reserving objections:

I don't recollect seeing Mr. Brewster there. I saw no agreement in writing. Six jurors in this case were never sworn to my knowledge. There were only five sworn to my knowledge. Some one was sworn as to proof of notice on Mr. Pennock. I was aware of Mr. Pennock's sickness from what I was told. I had no personal knowledge of the fact, no further than I heard from his next-door neighbor. No one was sworn before the jury as to Mr. Pennock's sickness.

(Objected to by Mr. Wiltbank.)

Re-examined:

For all I know to the contrary, Mr. Pennock had been sworn. I am satisfied that Mr. Pennock was sick, and is sick yet.

J. L. HANCOCK.

Affirmed and subscribed before me this nineteenth day of June, A. D. 1873.

J. E. CARPENTER, [L. S.]
Notary Public.

Messrs. Samuel D. Hall, George T. Jones, George Reese, being present and affirmed, say, we have heard the foregoing examination of Mr. Joseph L. Hancock, and confirm what he has said in the premises.

GEORGE T. JONES.
SAML. D. HALL.
GEORGE REESE.

Affirmed and subscribed before me this nineteenth day of June, A. D. 1873.

J. E. CARPENTER, [L. S.]
Notary Public.

On the above depositions are the following endorsements: In the court of quarter sessions, Philadelphia County—Paschall street. Depositions.

34 *Additional exceptions of Prentice & of heirs of Robert Chapman, dec.*

Quarter sessions.

IN RE }
Paschall street. }

The heirs of Robert Chapman, deceased, present the following additional exceptions to the report of the jury:

I. There is no certificate attached to the report, or authority from the court shown, authorizing the alleged jurors to hear and determine the question of damages as reported by them.

II. That only five jurors were sworn to view the premises, hear the evidence, and decide upon the question of damages, and their report is without authority of law.

III. That the assessment of damages by a jury of five persons is in conflict with section VI, article IX, of the constitution of the Commonwealth of Pennsylvania, which provides "that the right of trial by jury shall be as heretofore, and the right remain inviolate."

IV. That the proceedings to assess damages in this case are in conflict with article V, and article VII, of the amendment of 1789 to the Constitution of the United States, which provides that no person shall be deprived of his property without due course of law, and that in suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

JOSEPH R. RHOADS,
Attorney for George G. Prentice
and for heirs of Robert Chapman, deceased,
F. CARROLL BREWSTER,
Pro heirs of Robert Chapman, deceased,
Per S. E. CAVIN.

On the above exceptions are the following endorsements: Quarter sessions. Paschall street. Additional exceptions of heirs of Robert Chapman, deceased, to report of jury. Filed May 28, 1873. F. P. G.

PASCHAL STREET. } Q. S.

And now, to wit, June 23, 1873, on motion of W. W. Wiltbank, esq., the court grant a rule to show cause why the order of this date should not be vacated and the cause proceeded in. Returnable June 24, 1873.

J. R. L.

Paschall street. Rule. Filed June 23, 1873. R. S. G., pro clerk.

35 *Orders of court entered on road list.*

PASCHALL STREET.

June 23, 1, 2, 3, exceptions sustained.
" " 1st, 2d, add. ex. " and report aside.
En. p. 149, road list.
November 12, 1873. Exceptions dismissed and report confirmed.

JOS. ALLISON.

Court of quarter sessions.

MATTER OF }
Paschall street. }

And now, to wit, July 9th, 1873, it is ordered that all the parties concerned have leave to file written arguments in the support of or in answer to the exceptions filed in the said matter on or before Saturday, July 19th, 1873.

E. M. P.

Filed July 9th, 1873. R. S. G., pro clerk.

Affidavit of appellant and special allocatur for writ of certiorari from supreme court of Pennsylvania.

AFFIDAVIT.

IN THE MATTER OF THE CONFIRMATION BY THE court of quarter sessions for the city and county of Philadelphia, of the report of the jury to assess damages for the opening of Paschall street from Fifty-second street to Haverford avenue, in the city of Philadelphia.

CITY OF PHILADELPHIA, *ss:*

Jane C. Heyl, having been duly sworn according to law, deposes and says, that she is one of the owners of the property about to be taken for the opening of Paschall street under the above proceeding, she, the deponent, being one of the heirs of Robert Chapman, deceased, who with her were exceptants to the report of the jury in the above case, in the court of quarter sessions for the city and county of Philadelphia.

And deponent further saith that the writ of certiorari for which she now applies, to remove the record in the above case, is not intended for delay; but because deponent firmly believes that injustice has been done in the said court of quarter sessions.

JANE C. HEYL.

Sworn to and subscribed before me this eighth day of May, A. D. 1874.

H. OSCAR SMITH, [L. S.]
Notary Public.

Special allocatur.

And now, May 9, 1874, a writ of certiorari in the above case is specially allowed for just and reasonable cause shown to me.

GEORGE SHARSWOOD.

36 EASTERN DISTRICT OF PENNSYLVANIA,
City and County of Philadelphia, ss:

The Commonwealth of Pennsylvania, to the justices of the court of quarter sessions of the peace of the city and county of Philadelphia, greeting:

We being willing, for certain causes, to be certified of the appeal of Mary A. Pearson, John B. Heyl, and Jane C. his wife, in right of said

Jane C. Heyl, Caroline C. Harris, Edwin H. Delk, and Margaret his wife, in right of said Margaret Delk, the said Mary A. Pearson, Jane C. Heyl, Caroline C. Harris and Margaret Delk, being the heirs of Robert Chapman, deceased, from the order and decree of said court, made in the matter of opening Paschall street, sur report of jury to assess damages for opening said street from 52nd st. to Haverford avenue, in said city, before you, or some of you, depending, do command you, that the record and proceedings aforesaid, with all things touching the same, before the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia, in and for the eastern district, the first Monday of January next, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon, that which of right, and according to the laws of the said State, ought.

{SEAL OF THE SUPREME COURT PENNSYLVANIA, 1776.} Witness the Hon. Daniel Agnew, doctor of laws, chief-justice of our said supreme court, at Philadelpha, the twelfth (12th) day of May, in the year of our Lord one thousand eight hundred and seventy-four, (1874.)

May 9th, 1874, writ specially allowed, per curiam.

(Signed) J. ROBINSON,
Pro B. E. FLETCHER,
Prothonotary.

37 To the honorable the judges of the court within named:

The record and proceedings in the within case and all things touching the same are hereby certified by us, and we hereby send as within we are commanded.

(Signed) JOSEPH ALLISON. [SEAL.]
(Signed) EDWIN PAXSON. [SEAL.]

(Indorsed:) No. 39. July term, 1874. Supreme court. Appeal of Mary A. Pearson, John B. Heyl, and Jane C. his wife, &c. Certiorari to the court of quarter sessions for the peace, county of Philadelphia, returnable the first Monday of January, 1875. Rule on the appellee to appear and plead on the return day of the writ. Writ of certiorari in above case specially allowed, per cur. Filed May 12, '74. Signed F. P. G., pro clk. Q. S. J. R. Rhoads, F. C. Brewster. Record retd. May 12th, '74.

38 In the court of quarter sessions of Philadelphia County.

IN THE MATTER OF } Paschall street. }

And now, to wit, May 14th, 1874, on motion of Wm. W. Wiltbank, esq., the court grant a rule to show cause why the record should not be perfected by the entry nunc pro tunc of the minute of the appointment of the jurors. Retble. May 20, 1874.

J. R. L.

Suggestion of diminution of record.

In the supreme court of Pennsylvania, eastern district.

IN THE MATTER OF THE APPEAL OF MARY A. Pearson and others. } Of July term, 1874. No. 39.

And now, to wit, July 1st, 1874, John Yewdall and Anne Jane Yew-

dall, in whose favor, among others, was the decree of the court below, come and suggest diminution of record in this:

I. That the record, as returned in the said matter by the court of quarter sessions of Philadelphia County to this court, does not contain the appointment of George Reese and Joseph Pennock, two jurors, who were duly appointed to serve in the place of Furnam Mayhew and John F. Gross.

II. That the record, as returned in the said matter by the court of quarter sessions of Philadelphia County to this court, does not contain the affidavit, duly filed, exhibiting a list of the property-owners entitled to notice of the proceedings of the road jury in the said matter.

III. That the record, as returned in the said matter by the court of quarter sessions of Philadelphia County, does not contain the report of the jury first appointed in the said matter, nor the order of the said court of quarter sessions sustaining exceptions thereto and dismissing the said report.

WM. W. WILTBANK,
Attorney for John Yewdall and Anne Jane Yewdall.

Pearson's appeal.

In the supreme court of Pennsylvania, eastern district, of July term, 1874, No. 39.

Albert E. Peterson, being duly sworn according to law, doth depose and say:

39 That the record, as returned in the said matter by the court of quarter sessions of Philadelphia County to the supreme court of Pennsylvania, upon writ of certiorari issuing out of the said supreme court, is not full and entire, in this, that it does not contain the minute of the appointment of George Reese and Joseph Pennock, two jurors who were duly appointed to serve in the place of Furman Mayhew and George F. Gross, which minute still remains among the records of the said court of quarter sessions; and, further, in this, that it does not contain the affidavit, duly filed, exhibiting a list of the property-owners entitled to notice of the proceedings of the road jury in the said matter; and, further, in this, that it does not contain the report of the jury first appointed in the said matter, nor the order of the said court of quarter sessions sustaining exceptions thereto and dismissing the said report; which said affidavit, report of the jury first appointed, and order of the said court still remain among the records of the said court of quarter sessions.

ALBERT E. PETERSON.

Sworn and subscribed before me this 30th day of June, A. D. 1874.
J. E. CARPENTER, [L. S.]
Notary Public.

Specifications of error filed in supreme court of Pennsylvania.

The court below erred in dismissing the exceptions of the appellants, and of the city of Philadelphia, and confirming the report:

40 I. Because the record shows that there never were more than five persons sworn or affirmed as jurors in this case, and their report is without authority of law.

II. Because no petition was filed for the appointment of this jury 30

days before the commencement of the term at which said jury was appointed, but the names of six persons appointed jurors (of whom only five served on this jury) are endorsed upon an old petition, upon which also appears certified the appointment of a former jury, who had reported thereon.

III. Because the report of this jury does not show that there are no properties in the vicinity of the said Paschall street benefited by the opening upon which a portion of the damages should have been assessed according to law, but award that the whole damages shall be paid by the city of Philadelphia.

IV. Because the affidavit required by law and the rules of the said court of quarter sessions, setting forth the names of all the owners of real estate through which the said street runs, and containing a copy of the notice served upon each of the said property-owners, was not made and filed two days before the meeting of the jury in this case.

V. Because the damages awarded to the appellants are inadequate and insufficient.

VI. Because the jurors were not sworn or affirmed, as required by the act of June 13, 1836, to perform the duties of their appointment "impartially and according to the best of their judgment," but were simply sworn or affirmed "to perform their duties in the premises according to law," which is not the legal and proper qualification.

VII. Because the assessment of damages by the opening of the road or street in this case by a jury of only five persons was in conflict with section 6, of article IX, of the constitution of the commonwealth of Pennsylvania, which provided "that the right of trial by jury shall be as heretofore, and the right remain inviolate."

41 VIII. Because the act of the general assembly of Pennsylvania, approved July 13, 1836, entitled "An act relating to roads, highways, and bridges," providing for a jury of only six men, (being the act under which these proceedings were instituted,) is in conflict with art. V. of the amendments of 1789 to the Constitution of the United States, which provides inter alia that " * * no person shall be deprived of his * * * property without due process of law."

IX. Because the act of the general assembly of Pennsylvania, approved July 13, 1836, entitled "An act relating to roads, highways, and bridges," providing for a jury of only six men, (being the act under which these proceedings were instituted,) is in conflict with Art. VII. of the amendments of 1789 to the Constitution of the United States, which provides inter alia as follows: " * * * * nor shall private property be taken for public use without just compensation, and that in suits at common law, where the value in controversy exceeds twenty dollars, the right of tral by jury shall be preserved.

X. Because the act of the general assembly of Pennsylvania, approved July 13, 1836, entitled "An act relating to roads, highways, and bridges," providing for a jury of only six men, (being the act under which these proceedings were instituted,) is in conflict with Art XIV of the amendments to the Constitution of the United States, which provides as follows: " * * nor shall any State deprive any person of life, liberty, or property without due process of law."

JOSEPH R. RHOADS,
F. CARROLL BREWSTER,
Of Counsel for Appellants.

42 In the supreme court of Pennsylvania, eastern district.

Among the records thereof, it is thus (among other things) contained.

Copy of docket-entries from appearance-docket No. 14, of July term, 1874, p. 220.

Rhoads, F. C. Brewster.

APPEAL OF MARY A. PEARSON, ET AL., IN re-opening Paschall st. } 39.

Certiorari to the court of quarter sessions of the peace of the city and county of Philadelphia, ret'ble the first Monday January, 1875. Exit May 12, 1874. (Writ specially allowed per Sharswood, J.)

May 12, 1874, record returned.

43 And now, June, 11, 1874, W. W. Wiltbank, esq., appears for John Yewdall and Mary Yewdall, property-owners in whose favor was the decree of the court below.

July 1, 1874. Suggestion of diminution of record filed.
" " " Affidavit of diminution of record filed.
" " " order filed and motion granted to issue cert. sur dim. of record.
Eodie, writ of certiorari sur dim. of record exit.
Dec. 21. 1874. Certiorari sur dim., &c., and record returned.
Dec. 29, 1874. Certiorari & record ret'd.
" " " Eo die, specification of error.
" " " filed.
Jan. 4, 1875. Pleas filed.
February 15 and 16, 1876, argued.
March 13, 1876, proceedings affirmed.
Certified from the record.

Witness my hand and the seal of said supreme court, at Philadelphia, this 14th day of March, A. D. 1876.

[SEAL.] B. E. FLETCHER, *Proth.*,
Per J. R.

44 *Opinion of supreme court of Pennsylvania.*

Appeal of Mary E. Pearson.

Opinion by Gordon, J. Delivered March 13th, 1876.

This was a proceeding in the quarter sessions of Philadelphia County, on the petition of John and A. J. Yewdall, to ascertain and assess the damages that might result to the property of the petitioner in consequence of the opening of Paschall street, in its extension from Fifty-second to Haverford street, in the Twenty-fourth ward of the city of Philadelphia. Some five exceptions were taken to the action of the court in the premises, and are here now submitted to us for examination. We will consider them seriatim.

1st. That the requirement of the 76th section of the act of 13th June, 1836, requiring the petition to be presented thirty days before the commencement of the term of court at which the viewers are appointed, was not observed. The answer to this is, that the act referred to, which was a special act for Philadelphia, was repealed by that of 16th March, 1866, section 1, which applied the provisions of the general road law to the city. The two acts are evidently inconsistent with each other, and it is

apparent that the latter was designed to abrogate and supply the former.

2d. That it does not appear that more than five of the viewers were qualified or acted. But as the terms of the statute are complied with when five of the six are qualified and act, this exception cannot be sustained. If the act itself be not sufficient to convey its own meaning, it is helped out by the cases of the road in Little Brittain, 3 Ca., 69, and the New Hanover Road, 6 Har., 220. We have been cited to the case of Cambria street, 25 P. F. S., 357, as sustaining this exception. But a very cursory examination would have informed the counsel that that case was not in point, for there the sixth juror was sworn after he had made the view, and, as he had acted and signed the report, we held that this defect could not be cured by treating the report as that of the five competent viewers.

3d. That the jury was not properly sworn.

As we find nothing on the record beyond the statement that all the jurors present "were duly sworn or affirmed to perform their duties in the premises according to law," this exception must fall. As we must presume all things to have been rightly done, unless the contrary appear, and as the words "according to law," necessarily mean according to the form prescribed by law, we must assume that the statute in this particular was complied with. In re Cambria street, the form of the oath was specifically set forth as follows, "the other jurors were then each severally sworn or affirmed to the faithful discharge of their duties, the petition having first been read to them;" hence we were obliged to say that a form of oath different from that prescribed by the act of assembly had been adopted. Had the words "according to law" followed the above statement, the case would have been different, and the decision upon it would also necessarily have been different.

4th. That the act is unconstitutional in that it only provides for six instead of twelve jurors.

As this act has been treated, by both bar and bench, for the last forty years as constitutional, we may be excused if we pass this exception without further consideration.

5th. That the jury appointed had no jurisdiction to assess the damages sustained by the appellant, and this because the assessment was made upon a petition by John and A. J. Yewdall. This exception seems to me to be substantial. The words of the act are, "Any of the owners may petition," &c., and "It shall be the duty of the jury * * * to ascertain and report to the court, first, what damages the parties claiming the same are entitled to." I cannot, for my part, see how, under this act, one may have the right to claim damages for his neighbor, or how on such claim the city can be compelled to pay, for it does not follow that he will claim such damages at all, and if he chooses not to interpose such claim, who may do it for him? This view of the case, however, is of no value at present; for if it be correct, then the appellant has no standing to review these proceedings because they do not affect her; she is but a stranger to them.

There was another point made in the discussion of this case which we may notice and dispose of, although regularly presented by exception; that is, that the second set of viewers were appointed under the old petition after the report on the first view had been set aside. But there is no reason why this should not be done, for it would be but an idle form to first withdraw and then re-present the petition, which would obviate the technical difficulty, if any there were; and besides this, a prac-

tice of this kind is approved in the case of the Charleston Road, 2 Gr. Ca., 467.

Proceedings affirmed.

45 STATE OF PENNSYLVANIA:

In the supreme court of said State.

APPEAL OF MARY A. PEARSON ET AL.
In re
OPENING OF PASCHALL STREET.

I, Benjamin E. Fletcher, esq., prothonotary of the supreme court of Pennsylvania for the eastern district of said State, do hereby certify that the foregoing twenty-seven folios of manuscript and print hereto attached contain a full, true, and complete copy of the whole records and transcript of the entire proceedings had thereon in the supreme court of the State of Pennsylvania, as the same are now of record and on file in my office, including a true copy of the opinion of said court delivered by Mr. Justice Gordon in said case.

In testimony whereof I, Benjamin E. Fletcher, esq., clerk of said supreme court of Pennsylvania, hereto set my hand and affix the seal of said court at my office, in the city of Philadelphia, in the State of Pennsylvania, this twenty-third day of September, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] BENJ. E. FLETCHER,
Prothonotary of Supreme Court.

(Indorsed:) $10 paid. F. C. B.

46 In the Supreme Court of the United States.

MARY A. PEARSON ET AL., PLAINTIFFS IN error,
vs.
JOHN YEWDALL ET AL., DEFENDANTS IN error.

The plaintiffs in error assign the following specifications of error:

I. The act of the general assembly of Pennsylvania approved June 13th, 1836, entitled "An act relating to roads, highways, and bridges," providing for a jury of only six men, (being the act under which these proceedings were instituted and the final judgment entered,) is in conflict with Art. V of the amendments of 1789 to the Constitution of the United States, which provides, inter alia, that "* * * no person shall be deprived of his * * * property without due process of law."

II. The act of the general assembly of Pennsylvania approved June 13th, 1836, entitled "An act relating to roads, highways, and bridges," providing for a jury of only six men, (being the act under which these proceedings were instituted and the final judgment entered,) is in conflict with Art. V and Art. VII of the amendments of 1789 to the

47 Constitution of the United States, which provide, inter alia, as follows: "* * * nor shall private property be taken for public use without just compensation. * * * In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

III. The act of the general assembly of Pennsylvania approved June 13th, 1876, entitled "An act relating to roads, highways, and bridges," providing for a jury of only six men, (being the act under which these proceedings were instituted and the final judgment entered,) is in conflict with Art. XIV of the amendments to the Constitution of the United States, which provides, inter alia, as follows: " * * * nor shall any State deprive any person of life, liberty, or property without due process of law."

JOS. R. RHOADS,
F. CARROLL BREWSTER,
Of Counsel for Plaintiffs in Error.

Wherefore the plaintiffs in error for the errors above assigned pray the Supreme Court of the United States to reverse the judgment en-
48 tered by the said court of quarter sessions of the peace for the city and county of Philadelphia, in dismissing the exceptions filed by these plaintiffs in error to the report of the jury, and in confirming said report; and the plaintiffs in error also pray the said Supreme Court of the United States to reverse the affirmance of the said proceedings entered by the supreme court of Pennsylvania.

JOS. R. RHOADS,
F. CARROLL BREWSTER,
Pro Plaintiffs in Error.

(Indorsement on cover:) No. 721. Mary A. Pearson, Jane C. Heyl, Caroline C. Harris, and Margaret Delk, heirs of Robert & Jane Chapman, dec'd, plaintiffs in error, vs. John Yewdall & Anne Jane Yewdall-Pennsylvania sup. court. Filed 27th September, 1876.

REC. 721—3